COPYRIGHT CLEARANCE FOR THE DIGITAL LIBRARY: A PRACTICAL GUIDE TO GAINING ELECTRONIC PERMISSIONS FOR JOURNAL ARTICLES

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Provides a practical guide to gaining copyright clearance for making electronic copies of journal articles based on experience gained on the eLib project, Project ACORN. Includes tips on identifying and contacting copyright owners, elements to include in letters of approach, chase tactics, and dealing with refusals and charges.

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Increasingly libraries are wishing to harness new technologies to create solutions to their information provision problems. Electronic document delivery, electronic journal services, electronic on-demand publishing, electronic archives and electronic reserves are just a few of the new solutions being explored. The biggest problems faced by most new electronic services, however, are not the technological difficulties, but the social, cultural, legal and economic ones: such as electronic copyright.

Project ACORN is an electronic reserve project funded by JISC under the Electronic Libraries (eLib) programme. It is exploring the mechanisms for establishing an electronic 'short loan' collection of high-demand journal articles - from the obtaining of reading lists from academics right through to the delivery and monitoring of the electronic service. It is a partnership between Loughborough University, Swets & Zeitlinger - who are exploring the role for an intermediary for copyright clearance and digitisation, and Leicester University Library - where the project will be assessing the transferability of the ACORN model. As suggested above, one of the biggest hurdles has not been technological, but the gaining of electronic copyright clearance to make digital copies of articles for the collection. Where technologies have advanced, attitudes and legislation have not. However, to date we have managed to make electronic copyright agreements with 51 publishers both in the UK and abroad for the digitisation of 158 journal articles from 1955-1997. This article intends to share some practical approaches to gaining copyright clearance for digital copies from the lessons we have learned on Project ACORN.

Legal position on electronic copying

There is no provision for electronic copying under the Copyright Design and Patents Act of 1988 (CDPA88). Although fair-dealing and library provisions allow limited single photocopies of material to be made, technically electronic copying and viewing necessitates at least two copies to be made: one copy in electronic storage and

another temporary copy on the screen. As there are currently no licenses available to make electronic copies, it is necessary to approach copyright owners directly for permission. A major hurdle in gaining these permissions is the lack of knowledge about electronic copies. Whereas most academics, librarians and publishers know the benefits and limitations of paper photocopy collections, many are not so clear as to what can and cannot be done with an electronic copy. Copyright owners have expressed much fear about the security of their documents once they have been digitised: will they be reproduced in unlimited quantities and spread around the world at the touch of a button? Will the electronic text be altered by users reading it over a network? Will copies of articles be found freely available on the Internet without the appropriate author, journal and publisher source attached to them? These are all legitimate fears which need to be anticipated by those seeking permission to create digital copies. A firm grasp of, and respect for, the concept of intellectual property will significantly help the librarian in the search for electronic copyright permission.

Identifying the copyright owner

In most cases the copyright owner is the publisher, but it cannot always be assumed that this is so. The publisher, however, should know who the rights owner is, so it makes sense to approach them first. Journal publishers can be identified in a number of ways: using the journals themselves, through a search on the Internet, or through a variety of directories (for example *Ulrichs international periodicals directory*[1] or Whitaker's *Publishers in the United Kingdom and their addresses*[2]). The value of correct information is paramount. Publishing is a very dynamic industry and changes are constantly being made to journal titles, journal ownership, and staff within the publishing houses. There is also no standard member of staff who deals with electronic copyright permissions: it may be the Journals Manager, the Rights & Permissions Department, the Electronic Publishing Director, the Editor, or a number of others. It is wise, therefore, to ensure that the correct person is approached. A quick telephone call may

unearth information in one minute that a wrongly addressed letter will only reveal in three months.

There are a number of difficulties one might encounter while attempting to identify copyright owners. For example: many authors assigned the copyright in their articles to journal publishers before the advent of electronic copying, it is understandable therefore that some publishers are not confident about their right to license digital copies. Frequently one is requested to gain secondary - or primary - permission from the authors or learned societies that they represent. Again, some publishers may be able to license the textual content of their articles but not the graphs, tables, diagrams, photographs or other images, all of which may have separate copyright owners.

Seeking copyright ownership information can be a laborious process, and it is certainly highly recommended that detailed information is stored in some form of database to save future duplication of effort. Project ACORN has developed an electronic copyright management database called CLEAR (Copyright Licensed Electronic Access to Readings) based on Microsoft's Access. In this we store all the tutor and module information, the bibliographic details, progress and payment information, and usage data.

Contacting the copyright owner

The experience of Project ACORN has taught us that any letter to copyright owners requesting permission to make electronic copies needs to include certain elements if it is to succeed in explaining the service and winning co-operation.

Organisational details

It may be stating the obvious, but it is essential to state who you are and the type of organisation you represent. Publishers (particularly learned societies) may be in a better position to accommodate the request if the copying is for educational purposes for example. State who the service is aimed at in terms of size and category (e.g. 100 undergraduate students, a whole organization etc.) and what the purpose of the service is.

Security details

This may be the most well-scrutinised element of the letter. Describe how the documents are to be stored, in what format, and where. Outline the security measures you intend to implement, leaving leeway for negotiation with the copyright owner. State who will have access to the documents. Finally outline the period you wish to make them available for and what will happen to the documents when the expiry date has passed. As digital copies can be very expensive to create, it is advisable to implement an 'escrow' arrangement. An agreement is said to be escrow where it is suspended until a future date, or until conditions are met by which it becomes active. In terms of digital copies, this means that the articles can remain on the server once the expiry date has passed, but all external access to them is denied until a further agreement has been reached with the publisher. This saves having to destroy and re-create digital copies at the end of each expiry period.

Benefits to the copyright owner

Explain the potential benefits of the service to the copyright owner. These include the possibilities of a new market, information on the usage of their journal articles, and any other information on the management of electronic documents you may wish to offer. It is also important to explain the effect of the service on the market for the original. Project ACORN, for example, emphasised that the service was unlikely to affect publishers income from current serials subscriptions which are, in universities, primarily for research purposes, not undergraduate readings. In a digital era where there are so many unknowns, copyright owners have a lot to gain by participating with new services where document security is good and usage information is provided.

Actions required of the publisher

Make it clear to the publisher what your time scales are and the speed of response you need from them. Outline the actions you require of them very clearly - i.e. to sign a contract, and return it by what date, where, and to whom. It is certainly worth asking the publisher if they

can provide an electronic copy at the outset to save expensive digitisation costs. If not, an off-print of the article would be very useful as clean copies for scanning can be difficult to obtain. In our experience, where articles are being scanned because they are in high demand, the originals have often been vandalised, torn, or simply worn out with use. Scanning such copies is almost impossible.

In terms of contracts, it appears that few publishers have their own contracts for electronic copying rights at the time of writing, but more are beginning to introduce them. Project ACORN is working with a Heads of Agreement approach as it was felt that it would be difficult to specify fine contractual details when dealing with a very new form of service. Heads of Agreement are also being promoted by ECUP (the European Copyright Users Platform) as they allow for differences between national copyright legislations. For copyright owners, Heads of Agreement have the benefit of allowing room for negotiation while electronic publishing is still a relatively unknown quantity. Some example agreements can be found on the ECUP web pages[3]. For a better understanding of some of the legal terms and clauses that may be found in electronic licensing agreements, take a look at LIBLICENSE, "a World Wide Web resource intended to provide information and assistance for academic and research libraries as they read and negotiate licenses with information providers for electronic information content[4]".

Chase tactics

For many valid reasons, publishers can be slow to respond to electronic permission requests. Many have yet to make their electronic copying policy decisions, and some are so inundated with requests that replying to them is a time-consuming process. Some form of 'chase' routine is therefore going to be necessary. The keys to chasing are tenacity and regularity. We would advise waiting for three weeks to give the copyright owner time to respond to the initial request and then to chase every two weeks after that if no response has been received. Telephone chases seem to be the most successful. These will also reveal quickly where

a letter has been wrongly addressed. If difficulties are experienced catching someone at their desk, try making a telephone appointment with them - and keep it! Email chases can be as successful as telephone, but they lack the immediacy of a telephone call. Publisher Web sites often provide current email information, or comments boxes by which an appropriate email address may be applied for. Emails can be sent once a week rigidly until a response is received. It is wise to keep a batch of the original request letters to hand as our experience has been that copyright owners frequently ask for the original letter to be re-sent.

Dealing with refusals

When faced with a refusal do not give up hope. Refusals are often due to a misunderstanding of the nature of the request. Alternatively, copyright owners may have made 'no electro-copying' an interim policy until they've considered the all the issues and made an alternative decision. In either case it is always worth following it up.

If the refusal comes by telephone, ask if there is anyone available with whom you could discuss the service further. If not, or the refusal comes by post, get an appropriate board member's contact name (from the *Directory of Directors*[5]or *International Literary Market Place*[6] for example), and send them a letter. The letter should cover all the initial request information. Assure them that you don't want them to miss out on the benefits of participation, and ask whether they would reconsider. If they cannot alter their decision, consider it a refusal. However, do not write them off as non-co-operative; the next time you write, the policy may have changed. Even if it has not, continued applications from a potential marketplace may encourage a new, more positive electro-copying policy.

Payment

Project ACORN has been very successful in asking copyright owners to make no permission charge for the purposes and duration of the project. Our 'payment' is in the form of management and usage information on the electronic service. However, there is no doubt

that in the 'real world' copyright owners are requesting payment for the creation of networked electronic copies of their journal articles. The fees can take the form of license or royalty, and may vary (in our experience) between $1 per article printed from the database to $25 per page digitised. Obviously, if a copyright owner is asking for what you consider to be a reasonable charge, there is no need to query it. However, if you are faced with what you consider to be an unreasonable demand, there are a number of options open to you. Firstly, you can get back to them and ask them to reconsider, reiterating the type of usage to which you are putting the article, the number of users who will have access to, or are likely to access it, the time period it will be available for, and the effectiveness of your security arrangements. Secondly, you might be able to negotiate if the author of the article is a member of your organisation. Thirdly, it is worth enquiring whether a member of your organisation is on the editorial board of the journal - they may be able to affect policy decisions on permissions pricing. Finally, you could write to the *Newsletter on serials pricing issues*[7] which offers a forum for the discussion and promotion of fair pricing for serials.

Conclusion

Gaining copyright clearance in the digital era is difficult, but it is slowly improving as publishers see the new market emerging. One of the unique features of the ACORN project is the involvement of Swets and Zietlinger in exploring whether there is a role for an agent as an electronic permissions and digitisation intermediary. Our experiences are certainly pointing towards the need for the former. We have found the relationships Swets already has with publishers to be invaluable in attaining the permissions success we so far have. It is hoped that the market can make way for such a new service, generating a win-win situation for both copyright owners and libraries - and most importantly, for the end users.

Project ACORN have documented their electronic copyright permissions procedures. These can be found on the Project ACORN Web pages at http://acorn.lboro.ac.uk/

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